85-1114

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JOSEPH F. SPANIOL, JR.
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

JIMMY P. EARNEST,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to The

Supreme Court of The State of Louisiana

PETITION FOR WRIT OF CERTIORARI

Jimmy P. Earnest
Pro Se Litigant
117 LaRue Cannes
Duson, Louisiana 70529
Telephone: (318) 873-3787

QUESTION PRESENTED

May judges of a state enforce orders issued by themselves to confiscate driver's/ operator's license of persons arrested and charged with minor traffic offenses when the orders are in derogation of state legislative will and properly legislated law?

PARTIES

Parties to this case are Petitioner and judges of the Fifteenth Judicial District Court in action for the state of Louisiana.

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DECISIONS BELOW

A timely petition for writ of certiorari to the Supreme Court of Louisiana was denied 15 November 1985. No reason was given for denial. A timely petition for writ of certiorari to the Court of Appeal, Third Circuit of Louisiana was denied 1 October 1985. That court's decision was that there appeared to be no errors in the trial court's ruling. The decision and judgment of the Fifteenth Judicial District Court of Louisiana was rendered 10 September 1985 and are reprinted in the appendix at A-1 through A-4.

JURISDICTION

The decision and judgment of the Fifteenth Judicial District Court of Louisiana was rendered and entered on record 10 September 1985. A timely petition for writ of certiorari to the Court of Appeal, Third Circuit of Louisiana was denied 1 October 1985, and a timely writ of certiorari to the Supreme Court of the State of Louisiana was denied

15 November 1985. This petition is filed within the sixty day time period allowed. Jurisdiction of this court is invoked under 28 U. S. C. 1257 (3).

STATUTES INVOLVED

1. U.S. Constitution, 5th & 14th Amendments.
2. 28 U. S. C. 1257 (3)
3. Louisiana Constitution, Art 1, Sec 1, 2, 4, and 5, and Art II, Sec 1 & 2.
4. Louisiana Revised Statutes 32-391 A & B and 411 & 32:410, Sec B. (1)(a)
5. Louisiana Civil Code, Art. 1 and Introductory Commentary.
6. LSA-Code of Criminal Proc., Art. 17

STATEMENT OF THE CASE

Petitioner Jimmy P. Earnest was arrested by a Louisiana State Trooper while traveling on an interstate highway on 9 April 1985 for the alleged charge of speeding. Petitioner

at the time of his arrest advised the officer of his options afforded him under Louisiana Revised Statutes 32-391 A and B, and 32:411, and demanded the officer to take him immediately to the nearest judge or magistrate for further processing as outlined in the above statutes. The officer refused to take this action, and instead violated Petitioner's rights to due process of law by confiscating his operator's license against his will. Petitioner's later investigation revealed that the officer was acting under an en banc order issued by the judges of the Fifteenth Judicial District Court of Louisiana. (Appendix A-5) Petitioner filed a timely Motion for Declaratory Judgment to the Fifteenth Judicial District Court on 28 May 1985, praying for judgment in favor of petitioner and to: (1) Declare the en banc order to be in conflict with legislative intent. (2) To be in conflict

with the Separation of Powers Doctrine as set forth in Article II, Section 2 of the constitution of the state of Louisiana, (3) Restrain all law enforcement officials from confiscating driver's license and honor R. S. 32 section that provides for promise to appear, when requested by driver, and (4) Provide the availability of a magistrate to carry out the mandates of the laws and constitutional mandates of the state of Louisiana. Petitioner's Motion for Declaratory Judgment was denied on 10 September 1985.

REASONS FOR GRANTING THE WRIT

1. The judges of the Fifteenth Judicial District Court issued their en banc order under the authority of LSA-Code of Criminal Procedure, Article 17, which in part reads: "A court possesses inherently all powers necessary for the exercise of its jurisdiction and lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction." (Emphasis added). This court is assuming a greater power than is intended in this paragraph, as

the legislature is constitutionally prohibited from delegating this authority, even if this was their intent. This can be further substantiated by the contents of Article 1 of the Louisiana Civil Code, which provides: "Law is a solemn expression of legislative will." And in the Introductory Commentary to the Louisiana Civil Code is found that "This is a terse statement of the fundamental principle of a system of written law, and it is usually amplified by the explanation that the authority to make law belongs exclusively to the legislature while the court has the limited function of merely applying the law."

2. While the damages to Petitioner may appear on the face minimal, a court that knows, or should know, the unconstitutionality of its actions and yet issues orders that are contrary to the constitutions of both the state and United States instills fear in the heart of this petitioner as to the limit

the court will go in ensuring the comfort of their positions while ignoring the true hardships placed on the citizens involved by the court's actions.

3. The limited research made by Petitioner fails to reveal any record of this question being previously answered by this honorable court.

ARGUMENT

1. The judges of the Fifteenth Judicial District Court have taken it upon themselves to make law that would be difficult to enact through the legislature and their actions are apparently sanctioned by the state. This is the only conclusion that can be drawn from their actions as the law is very clear on the matter. Louisiana Revise Statute 32:391 A. and B. are reprinted verbatim hereinbelow:

A. Whenever any person is arrested for a violation of any provision of this Chapter or any regulation of the department or of

the secretary of the Department of Public Safety adopted pursuant thereto, except as otherwise provided in this Section, the arresting officer shall take his name, address, the license number of his motor vehicle, and the number of his operator's license, and shall issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons and notice. The time shall be at least five days after arrest, unless the person arrested demands an earlier hearing. If the person arrested demands an earlier hearing, he shall have a right to an immediate hearing or a hearing within twenty-four hours, at a convenient hour, to be before a magistrate within the parish where the offense was committed. Except as otherwise provided in this Section, the person arrested shall have the option of remaining

in custody pending his furnishing bail as fixed by a magistrate or depositing his operator's license with the arresting officer, as provided in R.S.32:411.

B. If the person arrested holds a Louisiana operator's license and gives his written promise to appear at the time and place stated, the officer may release him from custody or take him immediately before a magistrate, but shall not require the person arrested to deposit his operator's license. Any such person refusing to give the written promise to appear shall be taken immediately by the arresting officer before the nearest or most accessible magistrate having jurisdiction. Any person who willfully violates his written promise to appear shall be punished as provided in R.S. 32:57.1, regardless of the disposition of the charge upon which he was arrested originally. The arresting officer shall fully inform the arrested person of

the consequences of failing to honor a written promise to appear pursuant to R.S. 32:57.1.

Above referenced R.S. 32:411 is recopied in part: "A. Whenever any person lawfully possessed of a chauffeur's or operator's license issued to him by either: (1) The Department of Public Safety----is arrested and charged with a violation of the Louisiana Highway Regulatory Act or any municipal or parish ordinance regulating traffic in any municipality or in any parish he shall have the option of depositing his chauffeur's or operator's license with the arresting officer in lieu of bail."

The District Attorney attempted to evade the mandates of the above statute in the trial by saying that Petitioner was not arrested when "stopped" by the state trooper. Petitioner cited State of Louisiana v. Elton Hargrave, Jr., where the Louisiana Supreme Court decided that "Circumstances indicating

intent to effect a restraint on liberty of an accused, rather than precise timing of words "you are under arrest," determine when arrest has been made." If this court decision had any bearing on the ruling of the Fifteenth Judicial District Court the end results did not indicate so. The law and intent of the legislature are both quite identifiable in the above cited statute.

2. Reasons for Granting Certiorari:

The issues of this case are of wide import, as they touch upon the very intent of the Fifth and Fourteenth amendments to the United States Constitution concerning due process of law. In a state where the law of the land is hardly recognized, but French Napoleanic Codes are the basis of the court decisions it is essential that the checks and balance system provided by our constitution be sternly applied.

This honorable court surely recognizes that a citizen has no defense against an accusation by a public official in misdemeanor cases, as in a one on one stuation that usually exists between an arresting officer and the accused it is the word of the officer that is accepted by the courts regardless of the circumstances. This unethical, if not unconstitutional, situation places power in the hands of those who use it as a means of taxation rather than the application of justice as was intended by the creator of our laws.

As was advised to the court by Petitioner in his motion for declaratory judgment, the indiscriminate seizure of citizen's drivers license for even the most minor of traffic infractions is at best an unnecessary inconvenience and at worst a violation of statutorial and constitutional rights

based upon the loss of certain privileges and functions associated with the possession of a driver's license, and these seizures, which are conducted for the ease and convenience of the officials concerned, does a serious disservice to the citizens in the main. Many citizens have afforded others the opportunity to live more useful, longer and more productive lives through anatomical gift statements that are contained on the driver's license, with Louisiana being such a state (R.S. 32:410, Section B. (1)(a), to authorize such statements on the driver's or operator's license. It is quite possible therefore that the absence of a driver's license for even a short period of time could possibly present a life or death situation.

CONCLUSION

This court should issue its writ of certiorari to the Fifteenth Judicial District Court of Louisiana and reverse that court's decision to prevent further usurpation of power by that court and to further the cause of justice that is guaranteed the people by our constitutions.

The Defense at this time cross-examined the witness by citing Title 32 Section 391 of the Criminal Code of Procedures.

The Defense at this time cited a Supreme Court case of State vs Hargrave.

The Defense at this time offered to file and introduce into the evidence, Defense Exhibit #1, an Order Designation Security to be Posted for Traffic Offense, to which the State had no objections, and the Court will so allow.

The Defense at this time presented closing arguments.

The State at this time presented closing arguments.

The Court at this time finds the accused Guilty as charged. Legal delays for sentencing was waived and sentencing forthwith was requested, to which the Court ordered the accused to pay a fine of $75.00 plus Court costs, or serve a term of thirty (30) days in the Parish Jail.

The State presented evidence and testimony to the Court by calling the first witness, Tfc. L. Bernard, who was duly sworn by the Clerk and presented testimony to the Court.

The State will at this time stipulate to all of the testimony from Kenneth Brasseur, the Defense witness, except the fact that Dpy. Brasseur wouldn't allow the accused to post bond in lieu of receiving his driver's license.

The witness at this time identified the accused by pointing him out.

The defense at this time objected to the testimony relating to the radar device, to which the Court overruled.

The State at this time offered to file and introduce into the evidence, State Exhibit #1, the Trooper's Certification Card for Traffic Radar Operation. The State then moved that a copy of the Certification Card be substituted for the original, to which the Defense had no objections, and the Court will so allow.

Tuesday, September 10, 1985

Court met this day pursuant with the Honorable Ronnie D. Cox, Judge Presiding; Edward Broussard, Assistant District Attorney; Carol Champagne, Secretary to the District Attorney; Loretta Cowans, Deputy Clerk of Court; Margaret Duhon, Court Reporter, Richard Barnett and Joe Barnett, Representatives of Court Sobriety Program; Stephanie Costanza, Carolyn Banks, and Roland Boudreau, Deputy Sheriffs; Darlene Simmons, Representative of IDB; All being in attendance:

85-2570 STATE OF LOUISIANA) 71-55

VS)

JIMMY P. EARNEST

The accused was present in open Court, not represented by counsel. The State was represented by Ed Broussard. This matter previously set for trial is now being taken up. The Defense at this time asked the Court to reconsider some of the motions that he had previously introduced.

The Court will at this time deny the motions previously introduced.

The Defendant at this time stated to the Court that he wished to appeal the decision of the Court. The Court at this time denied the motion, stating that an appeal is not allowed on a misdemeanor or traffic charge. The Court then stated to the defendant that he could take Writs to the 3d Circuit.

The Court will at this time delay execution of the sentence until September 27, 1985.

The Court will at this time allow the defendant ten (10) days to apply to the 3rd Circuit Court of Appeals.

FILE NO. 82-1325?

ORDER DESIGNATING SECURITY TO BE POSTED FOR TRAFFIC OFFENSES

We, the Judges of the 15th Judicial District Court, sitting en banc, and acting pursuant to the provisions of LSA-Code of Criminal Procedure Article 17, do hereby issue the following order:

IT IS ORDERED, by the Judges of the 15th Judicial District Court, sitting en banc, that all Louisiana residents cited for violations of Title 32 of the Louisiana Revised Statutes shall post security or bail at the time or citation in one or more of the following methods:

(1) A bond in a sum equal to the amount fixed in the uniform bail schedule previously fixed by the Court; said bond shall be posted at the appropriate sheriff's office or jail after the offender is taken there by the enforcement officer, in the form of either:

(a) Cash;

(b) A bail bond with an approved bonding company as surety; or

(c) a property bond with a good and sufficient surety;

(2) Deposit of the offender's operator's or chauffeur's license in lieu of the security mentioned above. Such deposit may be made with the officer at the scene of the violation as described below.

When in the opinion of the enforcement officer, immediate release of the offender is not contrary to the public safety, the officer shall immediately inform the offender upon the issuance of the citation of the following, and shall proceed in the following manner:

(1) That the vehicle is subject to impoundment but in lieu of impoundment, bond, as provided by the traffic schedule, can be posted at the appropriate Sheriff's Office or jail.

(2) In lieu of bond, the offender can deposit his operator's or chauffeur's license with the arresting officer.

(3) If deposit of the license is made with the officer, the officer shall give the offender a receipt therefor and shall further inform the offender orally and on said receipt of the date, time, and place he is to appear in court to answer the charge; and that the receipt will permit him to drive until the date he is to appear in Court. The officer and the offender shall both sign the receipt in duplicate.

(4) The officer will further advise the offender that it may be possible, in accordance with the uniform bail schedule fixed by the Court, for him to pay a fine or post a cash bond for forfeiture in advance of the court date and thereby avoid a personal appearance; and that to accomplish this he should contact the appropriate Sheriff's Office after the lapse of at least five days (to allow time for processing) for such purpose and to make arrangements for the return of his license.

(5) After receiving deposit of a license and giving receipt therefor, the arresting officer should cause the license and the duplicate original of the receipt to be delivered to the office of the appropriate Sheriff for offenses to be tried in the 15th Judicial District Court.

This Order is to become effective May 15, 1982.

THUS DONE AND SIGNED in Chambers this 14th day of May, 1982.

BYRON HEBERT, JUDGE

DOUGLAS J. NEHRBASS, JUDGE

AL[illegible] M. BABINEAUX, JUDGE

LUCIEN C. BERTRAND, JR., JUDGE

SUE FONTENOT, JUDGE

HUGH E. BRUNSON, JUDGE

G. BRADFORD WARE, JUDGE

JOH[illegible] RIXIE MOUTON, JR., JUDGE

RONALD D. COX, JUDGE

LOUISIANA CONSTITUTION

Article 1, Section 1:

"All government, or right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protech the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved by the state."

Article 1, Section 2:

"No person shall be deprived of life, liberty, or property except by due process of law."

Article 1, Section 4:

"Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This section shall not apply to appropriation of property necessary for levee and levee drainage purposes."

Article 1, Section 5.

"Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invastions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularyly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."

Article II Section 1.

"The powers of government of the state are divided into three separate branches: legislative, executive, and judicial."

Article II Section 2.

"Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others."